

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

|                                  |   |                                    |
|----------------------------------|---|------------------------------------|
| <b>ROBERT BRADLEY SCOTT,</b>     | ) |                                    |
|                                  | ) |                                    |
| Petitioner,                      | ) | Case No. 7:05CV00740               |
|                                  | ) |                                    |
| <b>v.</b>                        | ) | <b>OPINION</b>                     |
|                                  | ) |                                    |
| <b>UNITED STATES OF AMERICA,</b> | ) | By: James P. Jones                 |
|                                  | ) | Chief United States District Judge |
| Respondent.                      | ) |                                    |

*Robert Bradley Scott, pro se*

Petitioner Robert Bradley Scott, a federal inmate, brings this Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255 (West Supp. 2005). In his Motion, Scott asserts that counsel provided ineffective assistance relating to a plea bargain Scott accepted. Upon review of the Motion and court records, I find that Scott's Motion must be dismissed without prejudice because his direct appeal is pending.

Pursuant to a written plea agreement, Scott pled guilty on June 21, 2005, to charges of conspiracy to distribute Schedule II narcotics and traveling in interstate commerce to commit arson to further a criminal activity. I sentenced Scott on November 10, 2005, to 175 months imprisonment and ordered him to pay restitution in the amount of \$311, 839.75. Scott noted an appeal on November 21, 2005, and

the United States Court of Appeals for the Fourth Circuit has appointed trial counsel to represent Scott for the appeal.

The well established general rule is that, absent extraordinary circumstances, the district court should not consider § 2255 motions while a direct appeal is pending. *Bowen v. Johnston*, 306 U.S. 19, 26-27 (1939); *United States v. Taylor*, 648 F.2d 565, 572 (9th Cir. 1981); *United States v. Gordon*, 634 F.2d 639 (1st Cir. 1980); *United States v. Davis*, 604 F.2d 474, 484 (7th Cir. 1979). Scott's § 2255 Motion fails to present extraordinary circumstances compelling this court to address his Motion during the pendency of his direct appeal.

For these reasons, I will dismiss the § 2255 Motion without prejudice as premature.

A separate Final Order will be entered herewith.

ENTER: December 7, 2005.

/s/ James P. Jones  
Chief United States District Judge